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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Dec 05, 2023

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN VALDA RICE,

Plaintiff,

v.

CHERYL STRANGE, MELISSA

ANDREWJESKI, TURNER, SOWYER,

WELLAN, MELISSA MOORE,

KRISTEN WILLIAMS, DYLAN

DENNISON, MICHELLE YOUNG,

TURNER, MCMAHON, FIELDS, GARY

QUARLES, KENNETH LYBBERT, C.

JAWILLI, CONLEY, SHANE RIRIE, MS.

PENCE, REBEKA DAVIS, RUTH DOE,

JASON MARTIN, K. HODGSON,

STEFAN ROSE, RAND, K.

GALLAGHER, D. NILES, JOSHUA

CRUGER, HORN, POKOLICCHIO,

GHAZAL ZAINAB, RONNA COLE,

CARIANNE SCHUSTER, MARK

No. 2:23-cv-00087-SAB

**ORDER GRANTING MOTION
FOR RECONSIDERATION;
RESCINDING ORDER
DISMISSING ACTION AND
JUDGMENT**

**ORDER GRANTING MOTION FOR RECONSIDERATION; RESCINDING
ORDER DISMISSING ACTION AND JUDGMENT -- 1**

1 ELIASON, RUTH DANIELS, REBWAR
2 BABAN, M. BARTLETT, S. DANIELS,
3 JOSHUA LANSVERK, D. HENNING, S.
4 THOMAS, CLARK, JOHN DOE, and DR.
5 LONGANO,
6 Defendants.
7

8 Before the Court is Plaintiff John Valda Rice's Motion for Reconsideration,
9 filed on October 13, 2023. ECF No. 31. For the reasons set forth below, the Court
10 will grant Plaintiff's Motion and rescind the Order Dismissing Action, ECF No.
11 29, and the Judgment in this case, ECF No. 30.

12 **PROCEDURAL BACKGROUND**

13 On March 3, 2023, Plaintiff, a prisoner currently housed at the Monroe
14 Correctional Complex, Twin Rivers, filed a *pro se* civil rights complaint pursuant
15 to 42 U.S.C. § 1983. ECF No. 6. The case was transferred to this District from the
16 Western District of Washington on March 29, 2023. ECF No. 10. By separate
17 Order, the Western District of Washington granted Plaintiff leave to proceed *in*
18 *forma pauperis*. ECF No. 5.

19 On April 27, 2023, this Court advised Plaintiff of the deficiencies of his
20 Complaint and directed him to amend or voluntarily dismiss within sixty days.
21 ECF No. 15. On August 1, 2023, Plaintiff filed a First Amended Complaint
22 ("FAC"). ECF No. 25. By Order dated August 29, 2023, the Court advised
23 Plaintiff of the deficiencies of his FAC and directed him to amend or voluntarily
24 dismiss within thirty days. ECF No. 28. The Court found that Plaintiff had failed to
25 state a claim upon which relief may be granted against any of the named
26 Defendants. *Id.* at 13–20. The Court also determined that Plaintiff's assertions that
27 many of his grievances and kites were either ignored or denied, or he received
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**ORDER GRANTING MOTION FOR RECONSIDERATION; RESCINDING
ORDER DISMISSING ACTION AND JUDGMENT -- 2**

1 unfavorable responses, and that various Defendants failed to provide adequate
2 medical care, were insufficient to state a claim upon which relief may be granted.
3 *Id.*

4 Although granted the opportunity to do so, Plaintiff did not amend his
5 complaint to state a claim upon which relief may be granted by the deadline of
6 September 28, 2023. The Court had cautioned Plaintiff that failure to amend or
7 voluntarily dismiss by that date would result in the dismissal of his FAC and a
8 possible “strike” under 28 U.S.C. § 1915(g). ECF No. 28 at 22. On October 3,
9 2020, the Court dismissed Plaintiff’s FAC with prejudice for failure to state a
10 claim against Defendants upon which relief may be granted. ECF No. 29. On
11 October 4, 2023, the Court entered judgment and closed the case. ECF No. 30.

12 **MOTION FOR RECONSIDERATION**

13 In his Motion for Reconsideration of this Court’s Order Dismissing Action,
14 ECF No. 29, Plaintiff asserts that he amended his complaint “in a timely manner.”
15 ECF No. 31 at 1. Plaintiff argues that “[h]e did what he was supposed to do, the
16 prison officials did not.” *Id.* at 2.

17 A motion for reconsideration may be reviewed under either Federal Rule of
18 Civil Procedure Rule 59(e) (motion to alter or amend a judgment) or Rule 60(b)
19 (relief from judgment). *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5
20 F.3d 1255, 1262 (9th Cir. 1993). “A district court may properly reconsider its
21 decision if it ‘(1) is presented with newly discovered evidence, (2) committed clear
22 error or the initial decision was manifestly unjust, or (3) if there is an intervening
23 change in controlling law.’” *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th
24 Cir. 2013) (*quoting School Dist. No. 1J, Multnomah Cnty., Or.*, 5 F.3d at 1263).
25 “There may also be other, highly unusual, circumstances warranting
26 reconsideration.” *School Dist. No. 1J Multnomah Cnty., Or.*, 5 F.3d at 1263.

27 Plaintiff asserts that shortly after he received the Court’s Order to Amend or
28 Voluntarily Dismiss Complaint, the lock on his cell door began malfunctioning and

1 maintenance workers began arriving at random times. ECF No. 31 at 1. He claims
2 that it depended on the staff member whether he was allowed to remain in his cell
3 and work on his Second Amended Complaint. *Id.* Plaintiff contends that he could
4 not work on his amended complaint in the dayroom because there are no
5 wheelchair accessible tables. *Id.* at 1–2. He claims that he was moved and allowed
6 to settle in, but was then moved again. *Id.* at 2.

7 Plaintiff contends that sometime in August 2023, an e-message was sent to
8 all inmates, informing them that all e-filing would be handled by the Legal Liaison
9 Office. ECF No. 31 at 2. Plaintiff claims that this is actually Ms. Rule. *Id.*

10 Plaintiff asserts that on September 28, 2023, the deadline to file any Second
11 Amended Complaint, at approximately 8:15 p.m., Plaintiff showed two corrections
12 officers the envelope containing his Second Amended Complaint. ECF No. 31 at
13 2–3, 16. He claims that he told the officers that the document had to go to the
14 Legal Liaison Office. *Id.* at 2. He states that he asked where to put the envelope
15 and one of the officers told Plaintiff to put it in the regular mailbox, then walked
16 around the front of the desk and pointed. *Id.* Plaintiff contends that he dropped the
17 envelope, along with his declaration of mailing, into the box. *Id.*

18 Plaintiff asserts that the envelope only had Plaintiff’s name and return
19 address in the upper left corner as required by DOC policy, Ms. Rule’s name and
20 office in the center, and “Legal Mail” in the lower right corner. ECF No. 31 at 3.
21 He states that the stamp could lead one to believe that it was out-going mail, but
22 the envelope did not contain any of the other outgoing legal mail requirements. *Id.*
23 Plaintiff also notes that DOC policy requires outgoing legal mail to undergo a
24 cursory search by an officer who would have then watched Plaintiff place the
25 contents inside of the envelope and Plaintiff would then seal the envelope in the
26 officer’s presence. *Id.* at 4. He claims that the officer would have then signed or
27 initialed over the sealed flap and documented it in the legal mail log. *Id.* He states
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1 that one officer watched Plaintiff drop the envelope into the box and the other
2 officer actually listed the mailed item. *Id.*

3 On September 29, 2023, Plaintiff asserts that the envelope was returned to
4 him with a post-it note, which read, “Need postage slip.” ECF No. 31 at 2. Plaintiff
5 argues that he did not know why this would be necessary and asked an officer who
6 did not know either. *Id.* Plaintiff claims that he attached the postage slip and wrote
7 a postal address. *Id.* He states that he believed the next officer would process it
8 properly. *Id.*

9 Plaintiff contends that on October 4, 2023, the envelope was returned yet
10 again with a post-it note stating that the envelope needed to specify the city, state,
11 and zip code. ECF No. 31 at 2. He states that the corrections officer who had
12 passed out the mail pointed out that Plaintiff had erred by writing the incorrect
13 abbreviation for the facility. *Id.* at 2–3. The officer told Plaintiff that it should not
14 cost any money to send it to another part of the prison. *Id.* at 3.

15 Plaintiff states that he began attempting to communicate with Ms. Rule via
16 the institutional e-messaging system. ECF No. 31 at 3. He argues that he
17 specifically asked that somebody come to his unit and e-file the Second Amended
18 Complaint with an explanatory letter to the Court. *Id.* Plaintiff notes that most of
19 his communications were answered by the corrections officer/law librarian. *Id.* He
20 claims that she “finally replied addressing the matter in a confused/questioning
21 manner asking if he was talking about e-filing which had been VERY clear.” *Id.*
22 Plaintiff argues that she told him she had only done the e-filing when the officer
23 who runs the law library was out sick, but the inmate population was advised that
24 she was doing it and was not told that she had stopped. *Id.*

25 Because Plaintiff asserts that he submitted his Second Amended Complaint
26 for mailing by the September 28, 2023 deadline, the Court will rescind the Order
27 Dismissing Action, ECF No. 29, and the judgment in this case, ECF No. 30.

1 Plaintiff's Motion for Reconsideration, ECF No. 31, is **GRANTED**. The Court
2 will proceed to screen Plaintiff's Second Amended Complaint.

3 Accordingly, **IT IS HEREBY ORDERED**:

4 1. The Order Dismissing Action, **ECF No. 29**, is **RESCINDED**.

5 2. The Judgment in this case, **ECF No. 30**, is **RESCINDED**.

6 3. The Clerk of Court shall remove any indicia that Plaintiff has acquired
7 a "strike" in this action.

8 4. The Clerk of Court shall **FILE** Plaintiff's Second Amended
9 Complaint and corresponding exhibits, which are attached to Plaintiff's Motion for
10 Reconsideration at **ECF No. 31-2 at 1-34**, as a separate docket entry.

11 **IT IS SO ORDERED**. The Clerk of Court is directed to enter this Order
12 and provide copies to Plaintiff. The Clerk of Court is further directed to forward a
13 copy of this Order to the Office of the Attorney General of Washington,
14 Corrections Division.

15 **DATED** this 5th day of December 2023.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive, flowing style.

21 Stanley A. Bastian
22 Chief United States District Judge
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